

**Effective 7/1/2016**

**7-23-401 Operational requirements for deferred deposit loans.**

- (1) If a deferred deposit lender extends a deferred deposit loan, the deferred deposit lender shall:
  - (a) post in a conspicuous location on its premises that can be viewed by a person seeking a deferred deposit loan:
    - (i) a complete schedule of any interest or fees charged for a deferred deposit loan that states the interest and fees using dollar amounts;
    - (ii) a number the person can call to make a complaint to the department regarding the deferred deposit loan; and
    - (iii) a list of states where the deferred deposit lender is registered or authorized to offer deferred deposit loans through the Internet or other electronic means;
  - (b) enter into a written contract for the deferred deposit loan;
  - (c) conspicuously disclose in the written contract:
    - (i) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan without incurring additional charges above the charges provided in the written contract;
    - (ii) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind the deferred deposit loan on or before 5 p.m. of the next business day without incurring any charges;
    - (iii) that under Subsection (4)(b), the deferred deposit loan may not be rolled over without the person receiving the deferred deposit loan requesting the rollover of the deferred deposit loan;
    - (iv) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the rollover requires the person to pay the amount owed by the person under the deferred deposit loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is executed; and
  - (v)
    - (A) the name and address of a designated agent required to be provided the department under Subsection 7-23-201(2)(d)(vi); and
    - (B) a statement that service of process may be made to the designated agent;
  - (d) provide the person seeking the deferred deposit loan:
    - (i) a copy of the written contract described in Subsection (1)(c); and
    - (ii) written notice that the person seeking the deferred deposit loan is eligible to enter into an extended payment plan described in Section 7-23-403;
  - (e) orally review with the person seeking the deferred deposit loan the terms of the deferred deposit loan including:
    - (i) the amount of any interest rate or fee;
    - (ii) the date on which the full amount of the deferred deposit loan is due;
    - (iii) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan without incurring additional charges above the charges provided in the written contract;
    - (iv) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind the deferred deposit loan on or before 5 p.m. of the next business day without incurring any charges;
    - (v) that under Subsection (4)(b), the deferred deposit loan may not be rolled over without the person receiving the deferred deposit loan requesting the rollover of the deferred deposit loan; and

- (vi) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the rollover requires the person to pay the amount owed by the person under the deferred deposit loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is executed;
  - (f) comply with the following as in effect on the date the deferred deposit loan is extended:
    - (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal regulations;
    - (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal regulations;
    - (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and
    - (iv) Title 70C, Utah Consumer Credit Code;
  - (g) in accordance with Subsection (6), make an inquiry to determine whether a person attempting to receive a deferred deposit loan has the ability to repay the deferred deposit loan in the ordinary course, which may include rollovers or extended payment plans as allowed under this chapter;
  - (h) in accordance with Subsection (7), receive a signed acknowledgment from a person attempting to receive a deferred deposit loan that the person has the ability to repay the deferred deposit loan, which may include rollovers or extended payment plans as allowed by this chapter; and
  - (i) report the original loan amount, payment in full, or default of a deferred deposit loan to a consumer reporting agency, as defined in 15 U.S.C. Sec. 1681a, in accordance with procedures established by the consumer reporting agency.
- (2) If a deferred deposit lender extends a deferred deposit loan through the Internet or other electronic means, the deferred deposit lender shall provide the information described in Subsection (1)(a) to the person receiving the deferred deposit loan:
- (a) in a conspicuous manner; and
  - (b) prior to the person entering into the deferred deposit loan.
- (3) A deferred deposit lender that engages in a deferred deposit loan shall permit a person receiving a deferred deposit loan to:
- (a) make partial payments in increments of at least \$5 on the principal owed on the deferred deposit loan at any time prior to maturity without incurring additional charges above the charges provided in the written contract; and
  - (b) rescind the deferred deposit loan without incurring any charges by returning the deferred deposit loan amount to the deferred deposit lender on or before 5 p.m. the next business day following the deferred deposit loan transaction.
- (4) A deferred deposit lender that engages in a deferred deposit loan may not:
- (a) collect additional interest on a deferred deposit loan with an outstanding principal balance 10 weeks after the day on which the deferred deposit loan is executed;
  - (b) roll over a deferred deposit loan without the person receiving the deferred deposit loan requesting the rollover of the deferred deposit loan;
  - (c) roll over a deferred deposit loan if the rollover requires a person to pay the amount owed by the person under a deferred deposit loan in whole or in part more than 10 weeks from the day on which the deferred deposit loan is first executed;
  - (d) extend a new deferred deposit loan to a person on the same business day that the person makes a payment on another deferred deposit loan if the payment:
    - (i) is made at least 10 weeks after the day on which that deferred deposit loan is extended; and
    - (ii) results in the principal of that deferred deposit loan being paid in full;
  - (e) threaten to use or use the criminal process in any state to collect on the deferred deposit loan;

- (f) in connection with the collection of money owed on a deferred deposit loan, communicate with a person who owes money on a deferred deposit loan at the person's place of employment if the person or the person's employer communicates, orally or in writing, to the deferred deposit lender that the person's employer prohibits the person from receiving these communications; or
  - (g) modify by contract the venue provisions in Title 78B, Chapter 3, Actions and Venue.
- (5) Notwithstanding Subsections (4)(a) and (e), a deferred deposit lender that is the holder of a check used to obtain a deferred deposit loan that is dishonored may use the remedies and notice procedures provided in Chapter 15, Dishonored Instruments, except that the issuer, as defined in Section 7-15-1, of the check may not be:
- (a) asked by the holder to pay the amount described in Subsection 7-15-1(6)(a)(iii) as a condition of the holder not filing a civil action; or
  - (b) held liable for the damages described in Subsection 7-15-1(7)(b)(vi).
- (6)
- (a) The inquiry required by Subsection (1)(g) applies solely to the initial period of a deferred deposit loan transaction with a person and does not apply to any rollover or extended payment plan of a deferred deposit loan.
  - (b) Subject to Subsection (6)(c), a deferred deposit lender is in compliance with Subsection (1)(g) if the deferred deposit lender, at the time of the initial period of the deferred deposit loan transaction, obtains one of the following regarding the person seeking the deferred deposit loan:
    - (i) a consumer report, as defined in 15 U.S.C. Sec. 1681a, from a consumer reporting agency, as defined in 15 U.S.C. Sec. 1681a;
    - (ii) written proof or verification of income from the person seeking the deferred deposit loan; or
    - (iii) prior repayment history with the deferred deposit loan from the records of the deferred deposit lender.
  - (c) If a person seeking a deferred deposit loan has not previously received a deferred deposit loan from that deferred deposit lender, to be in compliance with Subsection (1)(g), the deferred deposit lender, at the time of the initial period of the deferred deposit loan transaction, shall obtain a consumer report, as defined in 15 U.S.C. Sec. 1681a, from a consumer reporting agency, as defined in 15 U.S.C. Sec. 1681a.
- (7) A deferred deposit lender is in compliance with Subsection (1)(h) if the deferred deposit lender obtains from the person seeking the deferred deposit loan a signed acknowledgment that is in 14-point bold font, that the person seeking the deferred deposit loan has:
- (a) reviewed the payment terms of the deferred deposit loan agreement;
  - (b) received a disclosure that a deferred deposit loan may not be rolled over if the rollover requires the person to pay the amount owed by the person under the deferred deposit loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is first executed;
  - (c) received a disclosure explaining the extended payment plan options; and
  - (d) acknowledged the ability to repay the deferred deposit loan in the ordinary course, which may include rollovers, or extended payment plans as allowed under this chapter.
- (8)
- (a) Before initiating a civil action against a person who owes money on a deferred deposit loan, a deferred deposit lender shall provide the person at least 10 days notice of default, describing that:
    - (i) the person must remedy the default; and

- (ii) the deferred deposit lender may initiate a civil action against the person if the person fails to cure the default within the 10-day period or through an extended payment plan meeting the requirements of Section 7-23-403 .
- (b) A deferred deposit lender may provide the notice required under this Subsection (8):
  - (i) by sending written notice to the address provided by the person to the deferred deposit lender;
  - (ii) by sending an electronic transmission to a person if electronic contact information is provided to the deferred deposit lender; or
  - (iii) pursuant to the Utah Rules of Civil Procedure.
- (c) A notice under this Subsection (8), in addition to complying with Subsection (8)(a), shall:
  - (i) be in English, if the initial transaction is conducted in English;
  - (ii) state the date by which the person must act to enter into an extended payment plan;
  - (iii) explain the procedures the person must follow to enter into an extended payment plan;
  - (iv) subject to Subsection 7-23-403(7), if the deferred deposit lender requires the person to make an initial payment to enter into an extended payment plan:
    - (A) explain the requirement; and
    - (B) state the amount of the initial payment and the date the initial payment shall be made;
  - (v) state that the person has the opportunity to enter into an extended payment plan for a time period meeting the requirements of Subsection 7-23-403(2)(b); and
  - (vi) include the following amounts:
    - (A) the remaining balance on the original deferred deposit loan;
    - (B) the total payments made on the deferred deposit loan;
    - (C) any charges added to the deferred deposit loan amount allowed pursuant to this chapter; and
    - (D) the total amount due if the person enters into an extended payment plan.

Amended by Chapter 248, 2016 General Session